

**Sec. 20.5-1. Legislative intent.**

The City Council of the City of Belmont finds and declares as follows:

- (a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and
  - (b) Reliable studies have shown that breathing secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
  - (c) Health hazards induced by breathing secondhand smoke include lung cancer, respiratory function, bronchoconstriction, and bronchospasm; and
  - (d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sickleave because of adverse reactions to same; and
  - (e) Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restriction on smoking in public places; and
  - (f) The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places as set forth herein.
- (Ord. No. 874, § 1, 8-10-93)

**Sec. 20.5-2. Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) *Bar* is an enclosed and separate area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
- (b) *Bar area within an eating establishment* is an area which is fifteen (15) feet or less from the perimeter of a permanent counter which is primarily devoted to serving alcoholic beverages and within which the service of food is only incidental to the consumption of such beverages. The director of

community development or his or her designee may extend the fifteen-foot limit to encompass a larger area upon a demonstration by the owner of an establishment that such area is primarily devoted to the serving of alcoholic beverages and the service of food is only incidental to the consumption of such beverages.

- (c) *Dining area* means an enclosed area containing tables or counters upon which meals are served.
- (d) *Employee* means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
- (e) *Employer* means any person who employs the services of an individual person.
- (f) *Enclosed* means closed in by a roof and by walls on at least three (3) sides.
- (g) *Open to the public* means available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.
- (h) *Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to:
  - (1) Conference and classrooms;
  - (2) Employee cafeterias;
  - (3) Employee lounges;
  - (4) Hallways;
  - (5) Work area.

A private residence is not a "place of employment" unless it is used as a child care or health care facility, and the dining area of a restaurant is not a "place of employment."

- (i) *Restaurant* means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club (including veterans' club), boardinghouse or guesthouse, the primary function of which is to give, sell or offer for sale food to the public, guests, patrons or employees; except that the term "restaurant" shall not include a tavern or a cocktail lounge if the tavern or

cocktail lounge is a "bar" as defined in such subsection (a) of this section.

- (j) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.
  - (k) *Semiprivate room* means a room in a public or private health care facility containing two (2) beds for patients of the facility.
  - (l) *Service line* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
  - (m) *Smoke* or *smoking* means and includes inhaling or exhaling upon, burning or carrying any lighted smoking equipment for tobacco, or any other plant or product used for the personal habit commonly known as smoking.
  - (n) *Smoking victim* means any person present in a place where smoking is prohibited pursuant to section 20.5-3 of this chapter at the time that smoking occurs in such a place.
  - (o) *Sports arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.
- (Ord. No. 874, § 1, 8-10-93)

### **Sec. 20.5-3. Prohibition of smoking in public places.**

Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:

- (a) All enclosed areas available to and customarily used by the general public, including, but not limited to, all "public places" as defined in this chapter;
- (b) Elevators, escalators and stairways;
- (c) Public restrooms;
- (d) Service lines;

- (e) Buses, taxicabs and other means of public transit operating under the authority of the City of Belmont, and ticket, boarding and waiting areas of public transit depots;
- (f) All reception and waiting areas;
- (g) Galleries, libraries and museums;
- (h) All enclosed areas, including vehicles, owned or operated by the City of Belmont, or any other government entity within the City of Belmont;
- (i) Restaurants, both enclosed and outside areas;
- (j) Libraries and museums;
- (k) Any building not open to the sky which is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of any such production;
- (l) Enclosed sports arenas and convention halls;
- (m) Doctors' offices, dentists' offices, waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities and offices of all other health care providers;
- (n) Lobbies, hallways, stairwells and other common areas in apartment buildings, condominiums, senior citizen retirement or residential care houses, nursing homes and other multiresidential facilities and buildings; and
- (o) Public phone areas.

Notice of prohibition of smoking shall be posted.  
(Ord. No. 874, § 1, 8-10-93)

### **Sec. 20.5-4. Regulation of smoking in places of employment.**

- (a) Smoking is prohibited in all places of employment as defined in this chapter, except those places where smoking is not controlled under this chapter. This regulation applies to all private, public and nonprofit employers in the City of Belmont.
- (b) All employers, within the City of Belmont, shall communicate notice of the provisions of this

chapter to their employees, within ninety (90) days of the date of adoption of this chapter.  
(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-5. Smoking not controlled.**

(a) Notwithstanding any other provision of this chapter to the contrary, the following enclosed areas shall not be subject to the provisions of this chapter:

- (1) Bars and bar areas of restaurants;
- (2) Private residences, except when the residences are utilized as a health care facility, child care facility, family care home, foster care center, group home or senior care home;
- (3) Retail tobacco stores;
- (4) Hotel and motel lodging rooms rented to guests;
- (5) Any conference or meeting room in hotels or motels or private banquet area when these places are being used for private functions.

(b) Notwithstanding any other provision of this chapter any owner, proprietor, manager or other person who controls any public place described in this section may declare that entire public place as nonsmoking.

(c) All newly established bars in restaurants receiving a certificate of occupancy, and all existing bars and bar areas in restaurants, the state license for which are transferred voluntarily or involuntarily, after the effective date of this chapter, shall in order to be eligible for the exemption under this section, have a ventilation system separate from that of any public place in which smoking is not permitted by this chapter. The reason for this requirement is to prevent venting or circulation of smoke from the bar into any other public place. Filtering of air in the bar shall not be deemed compliance with this section. Smoking will not be permitted in newly established bar areas in restaurants.  
(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-6. Posting requirements.**

(a) Each owner, operator, manager or other person having control of a public place or place of employment within which smoking is regulated by this chapter, shall conspicuously post "No

Smoking" signs with letters not less than one (1) inch in height or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. At least one (1) sign shall be placed at the entrance to every applicable facility.

(b) An owner, operator or manager of a building in which pursuant to these regulations there is no smoking permitted in any space in the building, may limit the "No Smoking" postings to first floor entrances and exits and to elevator lobby areas of all other floors.

(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-7. Enforcement.**

(a) It shall be the responsibility of the city manager or his/her designee to enforce the provisions of this chapter.

(b) Any owner, manager, operator or employer of any establishment subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in said establishment.

(c) Any citizen who desires to register a complaint hereunder may do so by sending a letter to the city council, mayor or city manager.

(d) Notice of these requirements shall be given every new business license applicant, and every existing business licensee at the time of business license renewal.

(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-8. Nondiscrimination.**

No person shall discharge, refuse to hire or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this section.

(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-9. Violations and penalties.**

(a) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(c) It is unlawful for any person who owns or controls premises subject to the prohibitions of this chapter to fail to post sign(s) as required by this chapter.

(d) Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one (1) year.
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one (1) year.

(e) Violation of the provisions of this chapter are declared to be a public nuisance which may be abated by appropriate civil action.

(f) The remedies provided by this section are cumulative and are in addition to any other remedy existing at law or in equity.  
(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-10. Private claim/action.**

Any aggrieved person under this chapter may bring a civil action to compel compliance with this chapter, provided that the person shall have first requested in writing that the city take appropriate enforcement action and the city shall have failed to do so after forty-five (45) days.  
(Ord. No. 874, § 1, 8-10-93)

#### **Sec. 20.5-11. Public education.**

The city manager or his/her designee shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it, and guide owners, operators, and managers in their compliance with it. Within ninety (90) days of enactment of this chapter, the city manager shall have prepared a brochure which can be used to explain the ordinance [chapter] to businesses and citizens and can be enclosed in letters sent pertaining to complaints.  
(Ord. No. 874, § 1, 8-10-93)

#### **Secs. 20.5-12—20.5-19. Reserved.**

#### **Sec. 20.5-20. Purpose.**

The city council of the City of Belmont finds as follows:

(a) The surgeon general of the United States and the U.S. department of health and human services have found that a majority of those Americans who died of tobacco caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent.

(b) Cigarette smoking and other tobacco use by minors to be a continuing problem with grave and public health consequences.

(c) The surgeon general of the United States has called for a ban on the sale of cigarettes by vending machines.

(d) The availability of cigarettes and tobacco products marketed through vending machines which dispense such products and when tobacco products are openly displayed and easily accessible it promotes the use of tobacco products among minors contrary to existing state laws which prohibit the sale or distribution of cigarettes and/or tobacco products to persons under the age of eighteen (18).  
(Ord. No. 902, 1-23-96)

#### **Sec. 20.5-21. Tobacco product defined.**

"Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or by means of ingestion.  
(Ord. No. 902, 1-23-96)

#### **Sec. 20.5-22. Vending machine; sales prohibited.**

No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or appliance, or other device designed or used for vending purposes.  
(Ord. No. 902, 1-23-96)

#### **Sec. 20.5-23. Self-service displays prohibited.**

(a) No person, firm, association, or corporation shall sell, permit to be sold, or offer for sale any

cigarette or other tobacco product by means of self-service displays or by any means other than vendor-assisted sales.

(b) Self-service display shall mean an open display of tobacco products that the public has access to without the intervention or assistance of an employee. Vendor assisted shall mean that only a store employee has access to the tobacco product and assists the customer by supplying the product.

(c) A business which meets all of the following criteria shall be exempt from this section:

- (1) Allows members only to purchase products.
- (2) Requires all members to be eighteen (18) years or older.

(Ord. No. 902, 1-23-96)

#### **Sec. 20.5-24. Violations and penalties.**

(a) Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one (1) year.
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one (1) year.

(b) Violation of the provisions in this chapter are declared to be a public nuisance which may be abated by appropriate civil action.

(c) The remedies provided by this section are cumulative and are in addition to any other remedy existing at law or in equity.

(Ord. No. 902, 1-23-96)